

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 239 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANABHAI CHANABHAI

Versus

STATE OF GUJART

Appearance:

MR BR KYADA for Petitioners

MR MA BUKHARI AGP for Respondents No.1 and 2

MR DAXESH T DAVE for Respondent No. 3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 03/12/97

ORAL JUDGEMENT

This petition has been filed by the three petitioners in respect of common order made in two Revision Application Nos.6/90 and 7/90 by the Additional Chief Secretary (Dispute), Revenue Department, Ahmedabad on 28.11.1990.

The facts leading to this petition are that in village Thordi, certain vacant lands of the State came to be

allotted to the respondents No.3 to 11 on 7.1.1989 by the Deputy Collector. The petitioner No.1 Ranabhai Chanabhai representing one set and petitioner No.2 Thejabhai Palabhai and petitioner No.3 Premjibhai Palabhai, two brothers representing another set, claiming to be in possession of the said land, approached the Speaker of the Gujarat Legislature for intervening in the matter, following that averment reads

"Deputy Collector replied by his letter dated 18.4.1989 that the possession of that piece of land by the petitioners is unauthorised and, therefore, the land is not to be given to them. But somehow or the other, the Collector of Amreli, respondent No.2 herein, has taken the application of the petitioners as an Appeal and after perusing the records, he came to the conclusion and passed the order dated 25.4.1990 that the order passe by the Deputy Collector of Amreli dated 7.1.1989 is not a legal one and as the Deputy Collector has not considered the claim of the petitioners only on the ground that they were unauthorised occupants of that piece of land and on this ground they were fined by the Mamlatdar".

The Collector of Amreli by order dated 25.4.1990 quashed and set aside the order dated 7.1.1989 passed by the Deputy Collector allotting the land in question to the respondents No.3 to 11 and directed the Deputy Collector to reconsider the case after hearing the parties. It was this order which was challenged before the Additional Chief Secretary (Dispute), Revenue Department in Revision Application Nos.6 of 1990 and 7 of 1990 on behalf of respondents No.3 to 11.

It is the say of the petitioners that the Additional Chief Secretary has committed wrong in holding that the order dated 25.4.1990 passed by the Collector is bad in law only on the ground that before dismissing the Appeal the Collector has not given opportunity of hearing and on the ground that the land was allotted to Ex-service man and thus the action is against the policy of the Government and it should be considered sympathetically. The fact that Collector has set aside the order of Deputy Collector without notice to allottees is not in dispute.

From these two averments, it is apparent firstly that the Collector has treated the applications made by the petitioner to the Speaker, Gujarat Legislature as appeal not on the petitioners' approaching him but 'somehow or

the other'. Obviously, when the petitioners, who felt aggrieved with allotment had not approached the Collector but, had sought intervention of extra statutory authority, and there is no other material referable to any other source of power made which Collector could exercise power of appeal in respect of application made to Speaker, it is reasonable to infer that the Collector has intervened at the behest of some force exterior to his jurisdiction in discharge of his statutory duties. Then again the very fact that undisputedly the Collector has decided the applications made to the Speaker of Gujarat Legislature by treating the applications to be appeal before him without even affording an opportunity of hearing to the allottees whose allotment has been cancelled by his order. Thus the order suffered not only from bias but also from vice of not affording an opportunity of hearing to the affected parties. On both these grounds the order of the Collector, on the averments made by the petitioners in the petition, was made in breach of the principles of natural justice rendering it void ab-initio. In these circumstances, no fault can be found in the order of the Additional Chief Secretary (Dispute), Revenue Department by which the said order of the Collector has been set aside. This petition, therefore, fails and is hereby dismissed. Rule is discharged. As none has appeared on behalf of respondent Nos.3 to 11, there shall be no order as to costs. Interim relief, if any, stands vacated.

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